IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 18170 of 2003(K)

PETITIONER:

PLANT LIPIDS PVT. LTD., KADAYIRUPPU,
KOLENCHERRY, ERNAKULAM, REPRESENTED BY ITS
DIRECTOR, MARIAM GEORGE.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.PRAKASH PUTHIADAM
SRI.ROSHIN IPE JOSEPH
SRI.PAUL JACOB (P)

RESPONDENTS:
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1. KERALA STATE ELECTRICITY BOARD,
VAIDHYUTHI BHAVAN, THIRUVANANTHAPURAM.

2. THE SPECIAL OFFICER, (REVENUE)
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM

3. THE EXECUTIVE ENGINEER, APTS., REGIONAL
UNIT, ALUVA.

4. THE ASSISTANT ENGINEER, ELECTRICIAL
SECTION, ALUVA.

5. DEPUTY CHIEF ENGINEER, APTS.,
VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE LETTER ISSUED BY THE DEPUTY CHIEF ENGINEER DATED 6.1.2000

EXT.P2 TRUE COPY OF THE ELECTRICITY BILL DATED 9.7.2002

EXT.P2(a) TRUE COPY OF THE ELECTRICITY BILL DATED 4.1.2003 ISSUED TO THE PETITIONER.

EXT.P2(b) TRUE COPY OF THE BILL DATED 7.2.2003 ISSUED TO THE PETITIONER.

EXT.P2(c) TRUE COPY OF THE ELECTRICITY BILL DATED 9.8.2002

EXT.P3 TRUE COPY OF THE ORDER DATED 4.1.99 NUMBERED AS B-3-23439/98/CEI.

EXT.P4 TRUE COPY OF THE COMPLETION CERTIFICATE AND THE COVERING LETTER ISSUED BY THE AUTHORISED CONTRACTOR DATED 16.1.2003

EXT.P5 STRUE COPY OF THE ORDER DATED 7.3.2003 NO. B3-23439/98/CEI ISSUED BY THE CHIEF ELECTRICAL INSPECTOR.

EXT.P6 TRUE COPY OF THE LETTER DATED 17.5.2003 ISSUED BY THE DEPUTY CHIEF ENGINEER TO THE 2ND RESPONDENT.

EXT.P7 TRUE COPY OF THE NOTICE DATED 26.5.2003 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P8 TRUE COPY OF THE REGULATION 42(d) OF CONDITIONS OF SUPPLY OF ELECTRICAL ENERGY.

EXT.P9 TRUE COPY OF THE BOARD ORDER NO. 2225/98 DATED 20.10.98

EXT.P9(a) TRUE COPY OF B.O.NO. (B) NO. 1292 DATED 18.9.2002

EXT.P9(b) TRUE COPY OF THE BOARD ORDER NO. 46/2003 DATED 15.1.2003

EXT.P10 TRUE COPY OF THE OBJECTION DATED 5.6.2002 SUBMITTED BY THE PETITIONER TO 2ND AND 5TH RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 18170 OF 2003

Dated this the 21st day of August, 2007

JUDGMENT

Petitioner is challenging Ext.P7 penal bill whereunder second respondent has demanded huge amount towards penal charges for additional unauthorised load. I heard counsel appearing for the petitioner and senior counsel appearing for the Kerala State Electricity Board.

2. Petitioner's factory was inspected by APTS on 18.1.2003 and prepared a mahazar about the installations and equipments. According to the petitioner additional load alleged to have been installed were not connected though installed. The Kerala State Electriciby Board issued a penal bill only after four months of inspection demanding penal charges. Petitioner has produced Exts. P3 and P5 proceedings evidencing permission taken from the Electrical Inspectorate for the additional installations. Ext.P6 is the agreement that was approved by KSEB on 17.5.2003. According to the petitioner, even at the time of sanctioning of additional load through supplementary agreement,

namely, Ext.P6, petitioner was not informed about the unauthorised load or penal billing proposed. Counsel for the petitioner has referred to Exts. P9(a) and P9(b) orders issued by the Board stating that in the case of HT and EHT consumers no energey charges can be charged for unauthorised load, but penal charges have to be confined to demand charges. The period for which additional load should be charged at penal rate is only from the date of installation or otherwise for a maximum period of six months. It is not known on what basis second respondent has charged penal charges from 19.7.2002 because according to the petitioner commissioning was done only on 17.5.2003, that is after execution of the agreement. Mahazar is not produced in Court and there is no material for this Court to decide as to the date on which additional load was connected. If the mahazar does not indicate and there is no other material, depreciation schedules approved by the Income-tax Department in the assessment will prove when the additional investment was made by the petitioner. The penal bill is not in accordance with Board's order, not only pertaining to the date on which penal charges, if any, is payable, but also energy charges are

added to penal charges which is against Board's order. Therefore I set aside Ext.P7 and direct the second respondent to consider the petitioner's contentions stated above and other contentions to be raised by the petitioner and judgments to be relied on by the petitioner, and decide the matter after referring to mahazar and after deciding the actual date on which additional load was connected.

W.P. is allowed as above.

(C.N.RAMACHANDRAN NAIR)
Judge